

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4645 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DHARAMSHIBHAI C CHHEDA

Versus

COLLECTOR

Appearance:

Mr.UM PANCHAL for MR DD VYAS for Petitioners

NOTICE SERVED for Respondent No. 3 to 5

Mr.PREMAL JOSHI, A.G.P. for Respondent Nos.1,2 & 6

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 16/11/2000

ORAL JUDGEMENT

1. The prayer of the petitioners in this writ petition is for a writ of certiorari quashing the order dated 31.3.1990 (Annexure : D) passed by the Additional Chief Secretary (Appeals), Revenue Department with further prayer that the respondents No.1 & 2 be restrained from proceeding further in pursuance of the aforesaid order. The next prayer is for a declaration that the respondents No.3,4 & 5 have no right of way over the land in question.

2. Shri U.M.Panchal, appeared for the petitioner whereas Shri Premal Joshi appeared for Respondents No.1,2 & 6. The respondents No.3 to 5 are served but none appeared on their behalf.

3. This petition was admitted on 7.8.1990, but till date no counter Affidavit has been filed by any of the respondents. As such the only material for disposal of the writ petition is uncontroverted allegations in the writ petition and annexures appended to the writ petition.

4. Brief allegations in the writ petition are that 28.62 sq.mtrs. of land of city Survey No.1845 was required by the petitioners. The petitioner No.2 on behalf of both the petitioners moved an application on 26.7.1985 to the Collector, Valsad for selling the said land to the petitioners or grant lease of the land to the petitioners. After making proper inquiry the Collector, through order dated 19.2.1986, granted the said land to the petitioners vide Annexure : B and the petitioners paid price amounting to Rs.8586/-. Thereafter possession of the land was delivered to the petitioners. The petitioners obtained permission to construct over the land and actually constructed shop and are carrying on their business in the shop. The respondents No.3 to 5 claiming to be tenants of portion of City Survey No.5028 filed Civil Suit No.57/86 in the Court of learned Civil Judge, Valsad, in which the order of the Collector was challenged. Injunction Application was moved by the respondents No.3 to 5. Ex-parte injunction was granted, but on hearing the said application was rejected and ex-parte injunction was vacated vide Annexure : C on 5.6.1986. Feeling aggrieved the respondents No.3 to 5 preferred Appeal before the District Judge, Navsari, which, on the date of filing of writ petition, was reported to be pending. Having failed to get any relief from the Civil Court the said respondents filed revision Application against the order of the Collector dated 19.8.1986 before the Additional Chief Secretary, Revenue Department, who ultimately allowed the Revision and cancelled the order of the Collector vide Annexure : D. It is against this order that the present petition has been filed.

5. Since no counter Affidavit has been filed there is no reason to doubt the genuineness of the allegations made in the writ petition. During the interval of about 10 years counter Affidavit should have been filed at least by the respondents No.1,2 & 6.

6. After perusing the allegations made in the petition and the order passed by the Civil Judge in Civil litigation it is manifestly clear that the order of the Addl. Chief Secretary was passed on the motion of the respondents No.3 to 5 who apparently failed to obtain that relief against the order of the Collector dated 19.8.1986 from the Civil Court. The order of the Addl. Chief Secretary under challenge has been examined. The order of the Addl. Chief Secretary is based on surmise and conjectures. He has observed that the order of the Collector is against rules, but no specific rule has been mentioned which has been violated by the Collector. It has then been observed that proper inquiry was not done by the Collector. This is negatived from the order of the Collector in Para : 2 where it is mentioned that proper inquiry was made by the City Survey Superintendent Valsad regarding aforesaid matter. As such this observation of the Addl. Chief Secretary is also against the record. Another ground for quashing the order of the Collector is that the Collector did not inquire for what purpose the land was to be allotted. This observation is also imaginary. When inquiry was made by the City Survey Superintendent, Addl. Chief Secretary should have examined the inquiry report submitted by the City Survey Superintendent and not that he should have made observation of his unimagination. It was not a case where construction was raised illegally or hurriedly. After obtaining the land permission to construct was obtained. Plan was submitted and after getting the plan sanctioned shop was constructed. If shop was constructed the purpose of obtaining the land was to run business and no other purpose could be said for which the land was obtained from the Collector. Consequently this observation of the Addl. Chief Secretary is also unwarranted.

7. Another observation in the impugned order is that the Collector has not ascertained whether the land was required for the work of the State or not. This is also imaginary observation because there was nothing before Addl. Chief Secretary to show that any other department of the Government made an application to the Collector for allotment of small piece of land measuring 28.62 sq.mtrs. Another objection is that the Collector has avoided competitive bidding and has not held auction for sale of the land. It is true that no auction was held, but there was no material before the Addl. Chief Secretary to conclude that the State Government has been sufferer by the action of the Collector and if auction would have been held more price could have been fetched in the said auction. However, Shri Panchal for the

petitioners is ready to pay excess price, if any, which is determined by the Collector in accordance with the guidelines laid down by the Addl. Chief Secretary for determining the market price of the disputed land in accordance with the exemplar sale deed of the surrounding land or adjoining land. Shri Joshi, learned A.G.P. further suggested that the price of the land as it exists today should be ascertained and the petitioner should be asked to pay this price. This suggestion cannot be accepted. The order of the Collector is of 19.2.1986 and the order of the Addl. Chief Secretary under challenge is dated 31.3.1990. On these facts interest of justice will be met if the Collector is required to assess the market value of the land as it prevailed on 19.2.1986 and if the price is found on that date to be in excess at the rate of Rs.300/- per sq.mtr. the petitioners shall pay the difference within a period of one month of assessment of the market value of the land by the Collector as on 19.2.1986. However, if in this exercise the collector finds that the market value was less than Rs.300/- per sq.mtrs. on 19.2.1986 nothing shall be refunded to the petitioners.

8. Shri Joshi, learned A.G.P. has drawn my attention to condition No.3 in Annexure : A and has pointed out that since this condition has been violated the order of the Collector was liable to be cancelled. I do not find any merit in this contention. The respondents No.3 to 5 claimed infringement of their right of access, right of light and air through the open land, but they remained prima facie unsuccessful in the Court of Civil Judge (JD). They filed Appeal against the said order but they have not cared to bring on record what is the fat of the Appeal and what order has been passed in Appeal. Pendency of the Appeal has not been suppressed by the petitioners in this writ petition. Consequently, that is also not the ground for cancelling the order of the Collector.

9. For the reasons stated above the order of the Addl. Chief Secretary is set aside. The petition, therefore, partly succeeds. However, since the dispute raised by the respondents No.3,4 & 5 regarding easementary right claimed by them is pending before the competent Civil Court no declaration as sought for in relief (A) can be granted in favour of the petitioners.

10. In the result the petition partly succeeds and is partly allowed. The impugned order Annexure : D is set aside. The Collector is directed to assess the market value of the land in question as it prevailed on

19.2.1986 and in case the market value is found on that date to be in excess of Rs.300/- per sq.mtrs. the same shall be recovered from the petitioner within a month of determination of such market value. However, if the market value is found to be less than Rs.300/- per sq.mtr. on 19.2.1986, no amount shall be refunded to the petitioner. In the facts of the case there shall be no order as to costs.

sd/-

Date : November 16, 2000 (D. C. Srivastava, J.)

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